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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,844	02/10/2004	Kimio Ozawa	Q79750	9488
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EXAMINER				
CURS, NATHAN M				
ART UNIT		PAPER NUMBER		
2613				
MAIL DATE		DELIVERY MODE		
10/07/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/774,844	<b>Applicant(s)</b> OZAWA, KIMIO
<b>Examiner</b> NATHAN M. CURS	<b>Art Unit</b> 2613

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,3,5-8,10,11,13-15,17-22,24,26,28-31,33,35 and 37-40.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/NATHAN M CURS/  
Primary Examiner, Art Unit 2613

Continuation of 3. NOTE: The added language does not reduce or simplify the issues for appeal because the language "channel alive information" and the language "indicating whether there is transmission of at least part of the optical signals" are essentially equivalent, and the language "for determining whether the optical signals... should be passed or stopped" is intended use language..

Continuation of 11. does NOT place the application in condition for allowance because: Regarding claims 1, 3, 15, 24, 26, 33 and 35, Applicant first argues that Scarth fails to disclose different no-signal criterion levels for each detector in the pair of upstream/downstream (relative to an attenuator) detectors. However, in the specification, Applicant only distinguishes the two criterion levels as "L1" and "L2", for detectors that are spatially separated. It is not explicit in or inherent from the disclosure that L1 has a different value from L2. The broadest reasonable interpretation of the two claimed criterion levels includes only a spatial difference between the two levels (i.e. each separate detector has a corresponding level). Applicant next argues that Scarth's second detector does not detect a faulty attenuator based on the second criterion level. However, Applicant's own second detector doesn't detect "by itself" that the attenuator is faulty. Rather, Applicant's determination of a faulty attenuator is made using the second detector result in light of the first detector result. Further, Applicant's argument here is essentially that Scarth doesn't anticipate, when the limitation is in fact obvious in view of Scarth. Applicant is directed MPEP § 2141.III, which explains rationales to support rejections under 35 USC § 103, and states: "The prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." In the rejections under 35 USC § 103, where the limitations are not explicitly taught in the references, a rationale is provided for why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.

Regarding claims 7, 8, 11, 14, 19-22, 30, 31, 39 and 40, Applicant argues that Kawasaki doesn't disclose transmission of information indicating whether optical signals of respective channels should be passed or stopped. This argument is not persuasive because the claim language and its supporting disclosure is only directed to the supervisory signal providing status information on transmission of at least part of the optical signals of the respective channels. Such status information is not the same things as instructions on whether to pass or stop signals. The newly added language "for determining whether the optical signals... should be passed or stopped" is only intended use of the status information.